

**BANKING CODE OF 1999 (EXCERPT)**  
**Act 276 of 1999**

**487.13905 Indemnification; expenses and amounts.**

Sec. 3905.

(1) To the extent that a director, officer, employee, or agent of a bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 3904, or in defense of a claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against actual and reasonable expenses, including attorney fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(2) An indemnification under section 3904, unless ordered by the court, shall be made by the bank only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 3904 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion, which counsel shall be selected in 1 of the following ways:

(i) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(3) All directors may participate in the designation of a committee under subsection (2)(b) or in the selection of independent legal counsel under subsection (2)(c)(ii).

(4) If a person is entitled to indemnification under section 3904 for a portion of expenses, including reasonable attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the bank may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

**History:** 1999, Act 276, Eff. Mar. 1, 2000